

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

RONALD L. DAVIS v. DONAL CAMPBELL, COMMISSIONER, ET AL.

**Direct Appeal from the Chancery Court for Davidson County
No. 99-1243-I Irvin H. Kilcrease, Jr., Chancellor**

No. M1999-02294-COA-R3-CV - Decided July 13, 2000

A prison inmate filed an action in the Chancery Court of Davidson County seeking a declaratory judgment that his sentence should be corrected. He sought to proceed on an affidavit showing his inability to pay costs. The Commissioner of Correction moved to dismiss under Rule 12.02(2) and (6), Tenn. R. Civ. P. The Chancery Court of Davidson County dismissed the action because the plaintiff had failed to pay the costs and expenses in prior cases in violation of Tenn. Code Ann. § 41-21-812. The court also ruled that the complaint failed to state a cause of action. We affirm the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed and Remanded**

CANTRELL, P.J., M.S., delivered the opinion of the court, in which KOCH and CAIN, JJ. joined.

Ronald L. Davis, Only, Tennessee, Pro Se

Paul G. Summers, Attorney General and Reporter, Michael Moore, Solicitor General, and Pamela S. Lorch, Assistant Attorney General, for the appellee, Donal Campbell, Commissioner, and the Tennessee Department of Correction

MEMORANDUM OPINION¹

I.

Plaintiff's complaint alleged that he was sentenced on November 12, 1982, and should have been sentenced pursuant to the Criminal Sentence Reform Act which became effective on July 1, 1982. Therefore, the sentence he received for aiding and abetting murder in the second degree is void, and his sentence status on the department's records should be shown as "pending" while he seeks to get the sentence corrected.

II.

As we noted, the chancellor dismissed the complaint on two grounds. The first ground related to the legislation passed in 1996 that prevented the filing of lawsuits by inmates who had unpaid costs, fees, and expenses from prior lawsuits. Tenn. Code Ann. § 41-21-812. While the plaintiff's affidavit reveals a host of prior lawsuits, it does not show the amount of unpaid costs, fees, and expenses assessed against him, if any. The chancellor's memorandum, however, finds that the plaintiff has outstanding court costs in the amount of \$2,664.00, and the plaintiff does not contest, or even address, that fact on appeal. Therefore, the chancellor was correct when he dismissed the complaint on this ground. *See* Rule 13(a), Tenn. R. App. P.

III.

We also affirm the chancellor on the ground that the complaint failed to state a cause of action. In effect, the plaintiff is seeking a declaration from the Department of Correction that his sentence needs changing. Only by such action could the department change his status to "pending." But, "The Department of Correction may not alter the judgment of a court, even if that judgment is illegal." *State v. Burkhardt*, 566 S.W.2d 871 (Tenn. 1978). Only the trial court has the power to set aside an illegal sentence. *State v. Watkins*, 972 S.W.2d 703 (Tenn. Cr. App. 1998).

The judgment of the trial court is affirmed and the cause is remanded to the Chancery Court of Davidson County for any further proceedings necessary. Tax the costs on appeal to the appellant, Ronald L. Davis.

¹Rule 10 of the Rules of the Court of Appeals reads as follows:

The Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

